

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JEREMY LEE CONLIN,

Petitioner

v.

Civil Action No.: 2:06-0636

STATE OF WEST VIRGINIA,
ex rel. DOUG DRETTE,
ATTORNEY GENERAL GREG ABBOTT,
State of Texas,

Respondents

MEMORANDUM OPINION AND ORDER

Pending is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed August 15, 2006.

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who submitted her proposed findings and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). On September 15, 2006, petitioner filed objections.

The court has reviewed the proposed findings and recommendation entered by the magistrate judge on September 1, 2006. The magistrate judge recommends dismissal of the petition on the grounds that it is barred (1) by the one year limitation

period contained within the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), (2) by virtue of the fact that the petitioner is no longer in custody on the challenged conviction, and (3) because petitioner is presently in the custody of the State of Texas and beyond the reach of a West Virginia custodian who might properly be held to account in this court pursuant to section 2254. The magistrate judge further recommends that petitioner's application to proceed in forma pauperis be denied without prejudice.

Petitioner contends that he was not advised of his right to appeal his West Virginia conviction and sentence. As noted by the magistrate judge, his February 11, 2002, sentencing order so notified him of that right. Inasmuch as this ground alone is sufficient for dismissal, the court need not reach the additional bases cited by the magistrate judge. Accordingly, it is ORDERED that:

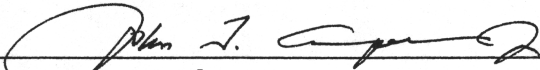
1. The proposed findings and recommendation be, and it hereby is, adopted by the court;

2. Petitioner's application to proceed in forma pauperis be, and it hereby is, denied without prejudice; and

3. That the petition and this case be, and they hereby are, dismissed with prejudice and stricken from the docket.

The Clerk is directed to forward copies of this order to the pro se petitioner, all counsel of record, and the United States Magistrate Judge.

DATED: October 3, 2006



John T. Copenhaver, Jr.
United States District Judge